IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4325 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of : NO

JJJJ

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CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 19/08/2003

ORAL JUDGEMENT

#. Heard learned advocate Mr.D.M.Thakkar on behalf of the petitioner and learned AGP Ms.Archna Rawal for respondent - State Authorities.

Rule has been issued by this Court on 11th January, 2002.

#. The brief facts giving rise to the present petition are as under :

The petitioner was appointed as Surveyor in Land Record Department on 9.12.1950. On date 13.5.53 some fourteen employees along with the petitioner were discharged on account of shrinkage in cadre. On 1.7.54 the petitioner was reabsorbed. In the year 1957 the petitioner had passed S.S.D. examination and thereafter on 1.3.72 the petitioner was promoted as Senior Clerk. However, in 1973 the petitioner was not allowed to appear in L.R.Q. examination by the Department as above break in service with effect from 13.5.1953 to 1.7.54 was not condoned. But the Department had allowed one Junior Person Viz. Mr.Pathan to appear in the examination though he was appointed subsequent to petitioner on 1.7.1954. The petitioner therefore made representation and has subsequently allowed to appear in L.R.Q. Examination held in 1977. As, no examination was held between 1973 to 1977. Thereafter, the petitioner was promoted as Shierestdar. The petitioner and other employees who were given break in service had filed Special Civil Application No.1707/1978 which was allowed and the respondent were directed to condone the break in service vide order dated 24.11.1980 and accordingly, the

petitioner was given continuing in service with effect from 9.12.1950. Thereafter, the petitioner was further promoted as Class-II officer i.e. Survey Mamlatdar on 1.7.1986. The petitioner made representation to respondent No.1 to implement the directions of this Court and give benefit of deemed date. But the respondent No.1 delegated the powers to respondent No.4 to decide the representation. After considering the representation of the petitioner, according to the petitioner, vide order dated 23.2.1993, deemed date has been given with effect from 17.2.1977. Against that also, the petitioner has made various representations dated 7th June, 1993, 25th August, and 3rd December, 1993. Thereafter, the petitioner was given communication dated 4.8.1998 informing that the order dated 23.2.1993 passed by the Settlement Commissioner and Land Records Director, State of Gujarat is under review and if the petitioner wants to file any reply, he should file the reply or make submissions on 13th October, 1998. In turn, the petitioner has submitted detailed representation - cum reply dated 13th October, 1998 addressed to the Deputy Secretary [Appeal], Revenue Department. However, according to the learned advocate Mr.Thakkar, there is no decision taken by the respondents till date.

#. Learned advocate Mr.D.M.Thakkar has submitted that vide order dated 24th September, 1998, the order dated 23rd February, 1993 which has been taken into review but in the said letter, it is not clarified that on what ground it is being done so and as such no reason has been given by the respondent. In absence of the reason, it is difficult for the petitioner to defend the case against the review notice. He also raised contention that the respondent authority is not having any power to review the order passed by the Settlement Commissioner and Land Records Director. It is also raised contention by the learned advocate Mr.Thakkar that under which Rules or under which Service Rules, the decision of the review has been taken by the respondent, is also not disclosed and therefore, his submission that the review notice itself is unreasonable and without application of mind. However, he also raised further contention that even in case if the respondent authority has power to review, such powers must have to be exercised within reasonable time and this is not reasonable time because the order dated 23rd February, 1993 is taken in review in the year 1998 after a period of five years. Therefore, he submitted that this letter of review dated 24th September, 1998 is required to be quashed and set aside.

#. Learned AGP Mr.Archna Rawal for the respondent has

submitted that in response to the review notice dated 24th September, 1998, the respondent has received reply dated 13th October, 1998 but thereafter, the matter is pending with the authority. However, she submitted that she has received parawise remarks from the respondent and according to her submissions, deemed date has been wrongly given to the petitioner and for that, the matter is required to be taken under review and therefore, the authority has issued review notice to the petitioner. She also submitted that in the departmental examination taken by the respondent, wherein permission was given as per the quota system and therefore, present petitioner was junior to said Mr.Pathan and therefore, no permission was given to the petitioner to appear in the departmental examination. She also submitted that at the most the petitioner is entitled to deemed date with effect from 4th June, 1977 on the date on which he has passed the examination and not prior thereto and therefore, the order passed by the Settlement Commissioner dated 23rd February, 1993 is required to be taken under review and for that matter is still remained pending with the authority. She also submitted that the order which has been passed by the Settlement Commissioner on 23rd February, 1993 wherein subsequently it was brought to the notice of the authority that there was some mistake and that is how the matter was taken in review.

#. I have considered submissions made by the learned advocates for the respective parties. This Court has also gone through the parawise remarks submitted by the respondents put up before this Court by the learned AGP Ms.Archana Rawal. The short question is that by order dated 23rd February, 1993 after consider the order passed by this Court in Special Civil Application No.1707 / 1978 dated 12th October, 1992, the Settlement Commissioner and Director of Land Records, Gujarat State, passed the order dated 14th September, 1992 taking into consideration the Government Resolution passed by the State in Revenue Department dated 18.10.1991, the order passed by the Superintendent of Land Records and Accumulation Officer, Ahmedabad dated 23.12.1991, the order of the Settlement Commissioner and Director of the Land Records, Gujarat State, Ahmedabad dated 14.9.1992, so also, the order passed by this Court in Special Civil Application No.7206 / 1992 dated 12th October, 1992 and while passing the detailed order came to the conclusion that the petitioner is entitled to deemed date with effect from 17th February, 1977 and the petitioner is senior to said Mr.Pathan and therefore, the date on which Mr.Pathan is given promotion in the post of Shierestdar on 17th February, 1977, the petitioner is entitled to the same

date being deemed date 17th February, 1977. This being the reasoned order after considering all the details, passed by the Settlement Commissioner. But now this order is under review while issuing notice to the petitioner dated 24th September, 1998. It is pertinent to note that in the review notice order under challenge, it is not disclosed by the respondent on what ground the order in question is being reviewed. It is also necessary to note that if the authority having powers to sum motu review against any orders passed by the below authority, then such powers must be exercised within some reasonable time. Though there may not be any limitation prescribed under the Statutory Rules, but it is an obligation on the statutory authority to exercise such discretionary powers within some reasonable time, otherwise, during the pendency the person may alter his position to such an extent that it will be very difficult to cancel the earlier orders by exercising the powers of review. Similarly provisions exist and provided under the Tenancy Act wherein the Apex Court as well as this Court in number of decisions have held that such suo moto reviewing powers must be exercised within some reasonable time limit. This Court in case of M.B.PRAJAPATI V. STATE OF GUJARAT reported in 2001 [1] GLR 242 has made certain observations on the issue of exercise of review powers and held that though no period of limitation is prescribed in Section 84-C, the authority should exercise the powers under Section 84C of the Act within some reasonable time.

#. It is also necessary to point out another aspect of the matter that the petitioner has already retired from the services in the year 1991 and benefits of deemed date has been granted in his favour on 23rd February, 1993 by speaking order. That order has been taken under review after a period of five years. It is also necessary to note another important aspect after considering parawise remarks received by the learned AGP Ms.Archana Rawal from the respondents that though notice of review is dated 24th September, 1998 and reply to that notice is dated 13th October, 1998 but despite passage of five years, no decision so far has been taken by the respondents. Thus, in all a period of ten years, the matter remained pending with the authority. Therefore, considering this lapse on the part of the respondent, now to disturb the decision which has been settled pursuant to the order passed by the Settlement Commissioner dated 23rd February, 1993 and on that basis, the petitioner has already received benefits of deemed date and consequential benefits and if such situation is now being disturbed, which will have

adverse effect even in pension and other benefits. It is very settled position of law that in case any mistake has been committed by the department while granting the benefits in favour of any employee and if such mistake comes to the notice of the Department after some years, then the the Department may rectify the mistake but in the result thereof, whatever amount or benefits received by the employee, the same cannot be recovered from such employee. This view has been taken by the Apex Court in decisions reported in AIR 1974 SC 1889, AIR 1994 SC 2480 and even this Court in a decision in Letter Patent Appeal No.577 / 2000 dated 4th April, 2001.

#. In light of above observations made by this Court as well as considering the view taken by the Apex Court, even if, the review is allowed and deemed date which was given pursuant to the order dated 23rd February, 1993 is set aside, then also, recovery is not possible and therefore also, it will be futile exercise of powers by the authority ultimately giving some agony to the petitioner till the decision is taken by the department. Therefore, considering peculiar facts and circumstances of the case that the petitioner has already retired from service in the year 1991 and the benefit of deemed date has been given by speaking order dated 23rd February, 1993 and more than five years have passed for issuance of the review notice to the petitioner, so also, the fact that though reply was filed in time on 13th October, 1998 till remained undecided despite of lapse of five years, according to my opinion, the review notice dated 24th September, 1998 which is not speaking one and unreasoned issued by the respondent purporting review of the order in question, deserves to be quashed and set aside.

#. In the result, the present petition is allowed. It is directed to the respondents to implement the order passed by the Settlement Commissioner and Director of Land Records dated 23rd February, 1993 if not implemented so far, and whatever benefits available in pursuance of the said order, the same may be given to the petitioner within two months from the date of receiving the copy of this order.

Rule is made absolute to the extent indicate above with no order as to costs.

Direct Service permitted.

Date : 19.8.2003 [H.K.Rathod, J.]

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